

MEMORANDUM

Agenda Item No. 8(M)(4)

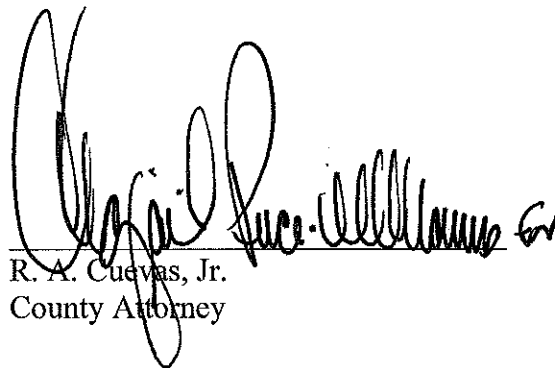
TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: January 22, 2014

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Resolution authorizing the
execution of a Specific Operating
Agreement with the State of
Florida Department of
Environmental Protection
for Cooperative Solid Waste
Program Management in
Miami-Dade County

The accompanying resolution was prepared by the Regulatory and Economic Resources Department and placed on the agenda at the request of Prime Sponsor Commissioner Jose "Pepe" Diaz.



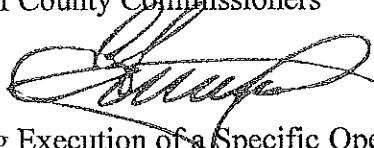
R. A. Cuevas, Jr.
County Attorney

RAC/smm

Date: January 22, 2014

To: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor



Subject: Resolution Authorizing Execution of a Specific Operating Agreement between Miami-Dade County and the State of Florida Department of Environmental Protection for Cooperative Solid Waste Program Management in Miami-Dade County, Florida

Recommendation

It is recommended that the Board approve the attached resolution authorizing the execution of a Specific Operating Agreement between Miami-Dade County and the Florida Department of Environmental Protection for cooperative solid waste program management in Miami-Dade County.

Scope

This agreement will involve environmental permitting and regulation countywide.

Fiscal Impact/Funding Source

This delegation agreement allows the County to collect fees for the issuance of operating permits at State-regulated solid waste facilities. Annual fee revenues of approximately \$9,000 provide funds for program costs.

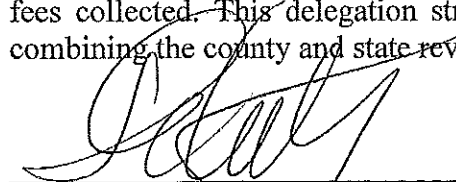
Track Record / Monitor

Rashid Istambouli, P.E., Pollution Regulation Chief, Department of Regulatory and Economic Resources, Division of Environmental Resources Management, will monitor this agreement.

Background

Pursuant to Resolution No. R-1146-98, Miami-Dade County and the Florida Department of Environmental Protection (FDEP) entered into a Solid Waste Program Specific Operating Agreement on October 8, 1998 that delegated certain responsibilities to Miami-Dade County for State-regulated solid waste management facilities. This delegation authorized Miami-Dade County to process applications for operating permits, perform inspections at solid waste management facilities to verify compliance with applicable regulations, initiate enforcement proceedings as warranted, perform recordkeeping and coordinate with FDEP. Solid waste management facilities accept waste for disposal, recycling, processing or storage and include construction and demolition transfer stations and landfills, municipal solid waste transfer stations, composting facilities, material recycling facilities and waste tire processors. Since 1998, the County, through DERM (now part of the Department of Regulatory and Economic Resources), has continuously and successfully managed the delegated Solid Waste Program in accordance with FDEP requirements.

The attached resolution approves the replacement Specific Operating Agreement with FDEP, thereby allowing the County to continue to manage the delegated Solid Waste Program and to retain the permit fees collected. This delegation streamlines the solid waste permitting process for the applicant by combining the county and state review at the local level and eliminating separate review by the state.


Jack Osterholt, Deputy Mayor



MEMORANDUM

(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: January 22, 2014

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 8(M)(4).

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☐ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(M)(4)
1-22-14

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A
SPECIFIC OPERATING AGREEMENT WITH THE STATE
OF FLORIDA DEPARTMENT OF ENVIRONMENTAL
PROTECTION FOR COOPERATIVE SOLID WASTE
PROGRAM MANAGEMENT IN MIAMI-DADE COUNTY

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves the Specific Operating Agreement between Miami-Dade County and the State of Florida Department of Environmental Protection for cooperative solid waste program management in Miami-Dade County, in substantially the form attached hereto and made a part hereof; authorizes the County Mayor or the County Mayor's designee to execute same for and on behalf of Miami-Dade County; authorizes the County Mayor or the County Mayor's designee to execute amendments to this agreement for time extension or other amendments that reasonably accomplish the intent of this agreement; and authorizes the County Mayor or County Mayor's designee to exercise the cancellation and renewal provisions contained herein.

The foregoing resolution was offered by Commissioner
who moved its adoption. The motion was seconded by Commissioner
and upon being put to a vote, the vote was as follows:

Rebeca Sosa, Chairwoman
Lynda Bell, Vice Chair

Bruno A. Barreiro
Jose "Pepe" Diaz
Sally A. Heyman
Jean Monestime
Sen. Javier D. Souto
Juan C. Zapata

Esteban L. Bovo, Jr.
Audrey M. Edmonson
Barbara J. Jordan
Dennis C. Moss
Xavier L. Suarez

The Chairperson thereupon declared the resolution duly passed and adopted this 22nd day of January, 2014. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

R

Thomas H. Robertson

Final Draft 09-18-2013
SOLID WASTE PROGRAM

SPECIFIC OPERATING AGREEMENT

BETWEEN THE

STATE OF FLORIDA

DEPARTMENT OF ENVIRONMENTAL PROTECTION

AND

MIAMI-DADE COUNTY

BACKGROUND

- (1) General Operating Agreements. Pursuant to Section 403.182 of the Florida Statutes (Fla. Stat.), the Florida Department of Environmental Regulation (now the Florida Department of Environmental Protection or DEP), entered into a General Operating Agreement (GOA) with the Miami-Dade County (MDC) on February 8, 1990. The General Operating Agreement specifies the general working relationship between DEP and MDC, and provides that the details of any authority delegated by DEP to MDC for administering any of DEP's specific programs to be set forth in a Specific Operating Agreement subject to periodic review. MDC referred to herein is Miami-Dade County.
- (2) Specific Operating Agreements. On October 8, 1998, the Florida Department of Environmental Protection and Miami-Dade County entered into a Solid Waste Program Specific Operating Agreement (SOA) that delegated some of the Department's Solid Waste Program responsibilities to MDC. A copy of the current SOA is on file at the Miami-Dade County Records Division, the MDC Miami-Dade County Department of Regulatory and Economic Resources, Division of Environmental Resources Management, the DEP headquarters in Tallahassee, and the Southeast District DEP office in West Palm Beach.
- (3) Objective. MDC currently has a DEP-approved Solid Waste Program. This SOA supersedes all provisions related to solid waste management in any prior SOA. The intent of this SOA is to formally establish the basis upon which DEP and MDC will work together to preserve and enhance the quality of air, water and land resources of MDC according to the provisions of Chapters 120 (except for Sections 120.53 through 120.55) and 403, F.S., and Chapters 62-4, 62-160, 62-302, 62-520, 62-701, 62-709, 62-711, and 62-780 Florida Administrative Code Rule (F.A.C.). This SOA is also intended to constitute DEP's approval of MDC's solid waste program as adequate to meet the

requirements of Chapter 403 and any applicable rules and regulations pursuant thereto, as provided in Section 403.182(1)(a), F.S.

- (4) **Delegation.** This SOA defines the provisions for delegation of the Solid Waste Program permitting, compliance assistance, and enforcement activities from DEP to Miami-Dade County. The DEP and MDC hereby enter into this SOA to delineate each party's responsibility for developing and implementing the Solid Waste Program defined here under applicable statutes, ordinances, and regulations. Nothing herein is intended to limit DEP's or MDC's independent authority.

For purposes of this SOA, "Division" refers to DEP's Division of Waste Management office located in Tallahassee; "District" refers to DEP's Southeast District office located in West Palm Beach.

PART I

ADMINISTRATION OF THIS SOLID WASTE SPECIFIC OPERATING AGREEMENT

- (1) **Commencement.** This SOA shall become effective on the date this SOA is executed by both DEP and MDC.
- (2) **Modification.** This SOA may be modified in writing at any time by prior mutual written consent of DEP and MDC.
- (3) **Agreement Conflicts.** If this Solid Waste SOA conflicts with any part of the GOA, then that part of the SOA shall not apply to DEP or MDC with respect to the solid waste program in Miami-Dade County.
- (4) **Severability.** If any part of this SOA is found invalid or unenforceable by any court, the remaining parts of this SOA shall not be affected if DEP and MDC agree in writing that the rights and duties of both parties contained in this SOA are not materially prejudiced, and if that the intentions of the parties can continue to be effective.
- (5) **Approval of County Ordinances.** MDC hereby states that MDC's existing ordinances pertaining to MDC's solid waste program, Chapter 24 of the Code of Miami-Dade County, Florida, are compatible with, or stricter or more extensive than and not in conflict with those imposed by Chapter 403, F.S., and the rules issued thereunder. Such ordinances are identified in **Attachment 1**, affixed to this SOA. The DEP has determined such stricter or more extensive ordinances shall be enforced by DEP if DEP elects to exercise its jurisdiction over solid waste management within the geographical boundaries of MDC. This determination is not applicable to ordinances not identified in **Attachment 1**. This determination does not apply to any facilities excepted from this delegation as set forth in Paragraph (1)(a) of Part III of this SOA. MDC certifies the existing remedies and adjudicatory procedures in Chapter 24 of the Code of Miami-Dade County are adequate to enforce those County solid waste ordinances that are stricter and more extensive than the DEP solid waste laws, rules, and regulations.

- (6) Future County Ordinances. To clarify the intent of DEP and MDC regarding the effect of Section 403.182(7), F.S., it is agreed that if MDC amends any portions of Chapter 24 of the Code of Miami-Dade County, Florida, pertaining to solid waste management, or adopts any new ordinances amending those portions of Chapter 24 of the Code of Miami-Dade County, Florida, pertaining to solid waste management, DEP will not enforce such amended or new ordinances unless and until DEP has determined that such ordinances are compatible with, or stricter or more extensive than and not in conflict with those set forth in Chapter 403, F.S., and rules and regulations adopted thereunder. Prior to making such a determination, DEP is not obligated to enforce such ordinances if it asserts its jurisdiction. This determination does not apply to any facilities excepted from this delegation as set forth in paragraph (1) (a) of Part III of this SOA.
- (7) Termination. If the GOA is terminated according to Section 2.07 of the GOA by either party without cause upon written notice to the other party at least 90 days prior to the effective date of such termination, then this SOA shall be simultaneously terminated. The County or DEP may terminate this SOA without cause by providing written notice to the other party at least 90 days prior to the effective date of such termination.
- (8) Applicability. The provisions of this SOA pertaining to permitting shall only apply to DEP-delegated permits and do not affect any MDC permits

PART II

SOLID WASTE PROGRAM MANAGEMENT

- (1) Adequate Staff. MDC shall seek to provide adequate and appropriate administrative, technical and legal staff, financial, computer, and other resources to effectively and efficiently implement this SOA in a manner which shall serve to prevent and control pollution and provide for enforcement of this SOA by appropriate administrative and judicial processes. MDC shall maintain an adequate solid waste permitting, monitoring, compliance and enforcement staff to implement the requirements of this SOA. MDC shall designate staff members who shall implement the requirements of this SOA, identify the staff members' areas of responsibility, and estimate the amount of time each such staff member will utilize to implement the requirements of this SOA. This may be accomplished utilizing the organizational chart (**Attachment 2**), which shall be periodically updated or supplemented by MDC as necessary when there are changes of key personnel or organizational structure. An organizational chart and an alphabetical directory of MDC and DEP personnel shall be exchanged by MDC and DEP upon request.
- (2) Training. MDC shall seek to ensure that its employees have the requisite entry-level training and the subsequent training needed to allow MDC's employees to properly accomplish their work assignments. MDC shall maintain adequate staffing to fully implement the requirements of this SOA. MDC staff will attend Solid Waste Workshops, when offered by DEP. MDC staff shall participate in DEP monthly Solid Waste

teleconferences and webinars. DEP shall provide notification of teleconferences and webinars. In addition, MDC is encouraged to send members of its solid waste program staff to individual training courses, and to allow participation in other DEP solid waste training activities, to the greatest extent practical.

- (3) Policy Coordination. MDC and DEP shall coordinate their activities regarding operations and enforcement issues with respect to this SOA.
- (4) Program Reports. DEP shall send MDC a copy of any report submitted by DEP to the United States EPA.
- (5) Evaluations and Audits. The Division and/or District staff shall periodically conduct both program performance evaluations of MDC's implementation of the delegated solid waste programs or activities.
 - (a) Purpose of Evaluations. The purpose of the performance evaluations is to determine if permit application reviews, monitoring programs, compliance efforts, and enforcement actions are being effectively conducted in accordance with DEP requirements and DEP rules and policies, and that appropriate records are being maintained for said activities. Records shall be maintained by MDC in accordance with the requirements of Chapter 119, F.S.
 - (b) Coordination. In the event MDC is subject to audit by a federal agency as well as the DEP, every effort shall be made to fully coordinate the audits. MDC shall have adequate time to complete any DEP preaudit surveys and to comment on draft DEP audit findings. Draft DEP audit findings shall be provided to MDC for review before releasing for general distribution.

PART III

AGENCY RESPONSIBILITIES

- (1) Delegation of Solid Waste Permitting. MDC shall receive, process, and act upon applications for DEP solid waste permits for which DEP has delegated solid waste permit issuance authority to MDC in accordance with the following general procedures and specific conditions.
 - (a) Effective Date and Limitations. DEP delegates to MDC the authority, and MDC assumes the responsibility, to receive, process and take final agency action on solid waste permits within the geographical boundaries of Miami-Dade County that otherwise would be administered by DEP, except for the following permits or categories of solid waste facilities:
 - 1. Waste-to-Energy facilities;
 - 2. Solid waste combustor ash residue landfills;

3. Active Class I and III Landfills;
4. Class I, II, and III Landfills that were closed on or after July 1, 1985, and that have DEP closure permits; authority for landfills closed prior to July 1, 1985 is delegated to MDC;
5. Facilities owned or operated by MDC;
6. Waste tire collectors operating under a DEP registration, and waste tire mobile processors operating under a DEP general permit in accordance with the requirements of Chapter 62-711, F.A.C.;
7. Any other facilities listed in **Attachment 3** and not included above; and,
8. Other facilities with unique situations or conditions if DEP has notified MDC that it intends to exercise its authority over such facilities.

Attachment 4 contains a summary of which party shall provide the lead or support role for various kinds of solid waste management facilities.

- (b) **Revocation.** In the event that the DEP Secretary determines that MDC has failed to comply with the conditions set forth in this SOA, MDC shall have a reasonable period of time, not to exceed 90 days from receipt of notification referencing this SOA, to take corrective action. If, in the judgment of the DEP Secretary, MDC fails to implement appropriate corrective measures within the time period allowed, the DEP Secretary may revoke this SOA. At the time of such revocation, the DEP shall immediately assume the responsibility for processing all DEP permit applications affected by such revocation.
- (c) **Specific Condition of Delegation.** In addition to the other provisions of this SOA, MDC shall comply with the following specific requirements.
 1. The review of the DEP permit applications and the drafting of the specific permit conditions shall be performed under the supervision of a professional engineer or professional geologist licensed by the State of Florida, as appropriate. The supervising professional shall provide professional certification of all technical evaluations of DEP permit applications as required by Florida law.
 2. In the exercise of DEP-delegated solid waste permitting authority, MDC shall comply with the applicable permitting requirements set forth in Chapters 120 (except for Sections 120.53 through 120.55) and 403, F.S., and Chapters 62-4, 62-160, 62-302, 62-520, 62-701, 62-709, and 62-711 and 62-780 F.A.C.

3. MDC shall implement the written permitting procedures issued by the DEP Secretary and the DEP Secretary's designated legal and program directors.
4. MDC is authorized to make determinations of whether or not a solid waste management facility is exempt under DEP's solid waste permitting and solid waste rules. MDC is not authorized to issue a variance from DEP solid waste rules pursuant to Sections 120.542 or 403.201, F.S., or to approve alternate procedures under Rule 62-701.310, F.A.C.
5. MDC shall use permitting forms adopted by DEP. MDC may affix its name and logo on the forms. MDC may request additional information required by local ordinance or policy. The local program may develop unified forms that contain all information required by the DEP and MDC, and may use those forms in lieu of forms adopted by DEP, upon approval by the DEP.

MDC shall issue DEP solid waste permits using the format used by the DEP District Solid Waste Program. DEP shall provide MDC with current model forms in use by the DEP District Solid Waste Program. MDC may develop an alternate DEP solid waste permit format compatible with the DEP format, and may use that format upon approval by the DEP.

6. MDC shall have access to DEP's computer information systems used for the Solid Waste Program, including, but not limited to, SWIFT, WACS, PA, OCULUS, and COMET (for new sites only in PA), and shall accurately and in a timely manner enter all DEP solid waste permit-related data as DEP solid waste permit applications are processed and as DEP solid waste permits are issued or denied. For purposes of PA, a timely manner is within three working days. MDC shall not have access to confidential information maintained in the DEP computer information systems.
7. MDC shall ensure that water quality data from permitted facilities is submitted to DEP using ADaPT software.
8. MDC shall have the legal resources to defend MDC's permitting decisions in administrative hearings pursuant to Chapter 120, F.S. To the extent that DEP's technical or rule interpretation or guidance is at issue, DEP shall assist, at DEP's option, MDC in such proceedings.
9. MDC shall have full authority to make determinations regarding the correct DEP fees for DEP solid waste permit applications for delegated solid waste management facilities. All determinations shall be made pursuant to Section 403.087, F.S., and Rules 62-4.050 and 62-701, F.A.C., and to any written guidance issued by the DEP Secretary and the DEP Secretary's designated legal and program directors.

10. MDC shall coordinate reviews with and seek comments from DEP's permitting section when reviewing applications for solid waste management facilities.

(d) Distribution of Permit Fees.

1. MDC may maintain its own permit application fee schedule pursuant to its own rules and enabling legislation to the extent allowed by law. In any event, MDC shall require permit applicants to remit at least the application fee required by the DEP's current fee schedule.
2. DEP and MDC agree that MDC should receive specific financial compensation from DEP to cover the reasonable cost of acting on applications for state solid waste permits. Therefore, DEP shall allow the County to keep 100% of the fees authorized under Section 403.087, F.S., and Rules 62-4.050 and 62-701.315, F.A.C., for delegated permits.

(e) Permitting Reporting Requirements. MDC shall report MDC's solid waste permitting activities to DEP by utilizing the following DEP reporting systems at the frequencies set forth below:

1. Update WACS for sources permitted by MDC. All such permit data shall be entered into WACS prior to permit issuance.
2. Update PA for all applications received, permits processed, and issued or denied by MDC. All such information shall be entered into PA within three working days of any solid waste permitting action.

(f) Exchange of Information. All DEP solid waste permits and supporting material in the possession of MDC shall be made available to DEP upon request or as otherwise required by this SOA.

(2) Application Review Procedures.

(a) Delegated Permits

1. DEP Procedures.
 - a. When DEP receives a permit application for a solid waste management facility within Miami-Dade County for which permit issuance authority has been delegated, DEP shall transfer of the application and fees to MDC. Because the permit application timeclock starts when DEP receives the application, DEP shall transfer the application and fee within three working days of receipt of the application.

- b. For delegated solid waste management facilities required to provide financial assurance, DEP's (Division) Solid Waste Section in Tallahassee shall perform all permit and compliance reviews of financial assurance documentation, and provide written approval of the financial assurance mechanism to MDC and the applicant. Within 20 days of receipt of a permit application requiring financial assurance, DEP shall provide MDC with any needed requests for additional information. DEP shall also provide financial assurance specific conditions in a timely manner for inclusion in DEP solid waste permits issued by MDC, and shall defend any challenges to those DEP permit conditions if necessary.

2. MDC Procedures.

- a. Pursuant to Rule 62-4.050(5)(c), F.A.C., when MDC receives the proper fee payable to MDC, the DEP permit processing time requirements of Sections 120.60(2) and 403.0876, F.S., shall begin. If MDC receives a check for a DEP solid waste permit application fee payable to DEP, MDC shall promptly return the check to the applicant and notify the applicant that the applicant must resubmit the check payable to Miami-Dade County. Notwithstanding the foregoing, the DEP permit processing time requirements shall commence upon receipt of the original check.
- b. If the amount of the submitted fee for such an application is not correct, MDC shall notify the applicant, and resolve the matter in accordance with DEP's permit fee rules. If MDC determines that a fee is correct for an application that MDC will process, MDC shall deposit and process the check.
- c. Within seven working days of receiving the application, MDC shall provide DEP with one electronic copy of the DEP solid waste permit application as received and will insert the application document into OCULUS. For delegated facilities required to provide financial assurance, MDC shall also provide DEP's Solid Waste Section in Tallahassee with one electronic copy of the application and original financial documents within seven working days. MDC shall review closure cost estimates and annual updates for compliance with DEP's rules within 30 days of receipt by MDC, and MDC shall forward MDC's determination of adequacy to DEP's Financial Assurance Section within the Division's Compliance Assistance Program at Mail Station 450, 2600 Blair Stone Rd., Tallahassee, Florida 32399.

- d. A copy of all correspondence related to a DEP solid waste permit application will be kept on file by MDC. MDC will ensure that all permit related documents are inserted into OCULUS in a timely manner. MDC will email to the DEP District Office an electronic copy of its proposed agency action on such permit application at the same time that MDC mails or emails MDC's intent to issue (or deny) to the applicant.
 - e. MDC shall review each DEP solid waste application for completeness within 30 days of receipt by either MDC or DEP. If the application is determined to be incomplete, a letter of incompleteness shall be sent by certified mail, return receipt requested, to the applicant by MDC setting forth and requesting the required additional information. MDC shall include all comments or questions provided by DEP in MDC's request for additional information. MDC will endeavor to achieve the DEP policy memo or equivalent for all requests for additional information, **Attachment 5**. The PA database is now capable of auto-generating application receipt emails and RAI reminder emails. The Department encourages MDC to develop similar notifications and coordinate with Division staff to utilize this feature. Examples are attached as **Attachment 6**.
 - f. When the application is determined to be complete, MDC shall process the application take final agency action on behalf of DEP on the completed application in accordance with the procedures and time frames which would apply to DEP, if DEP were taking final action on the application. MDC shall notify DEP by email when a complete copy of each solid waste permit issued and/or denied has been inserted into OCULUS.
3. Administrative Hearings and Final Agency Actions. All delegated solid waste applications received by MDC shall be processed accordance with the state laws and DEP rules. Each DEP solid waste permit issued or denied by MDC shall include a Notice of Rights informing affected persons that any petition, or request for an extension of time to file a petition, shall be submitted to MDC and said notice shall conform with the requirements set forth in Rule 62-110.106, F.A.C.
- a. Administrative Challenges to Permits. All delegated solid waste permitting decisions made by MDC shall be subject to the provisions of the Florida Administrative Procedure Act, Chapter 120, F.S., as if these decisions had been made by DEP. Each timely petition for formal administrative hearing on a delegated permit application received by MDC shall be evaluated for compliance by MDC with Chapter 120 and Rules 28-106 and 62-

110.106, F.A.C. If MDC determines that a petition has met the aforesaid requirements, it shall send a copy of the petition and any other relevant documents to the DEP Agency Clerk in the Office of General Counsel at Marjory Stoneman Douglas Building, 3900 Commonwealth Blvd., Tallahassee, Florida 32399-3000, with a request to refer the petition to the Division of Administrative Hearings (DOAH) for the assignment of an Administrative Law Judge. DEP shall have the right, if it so chooses, to intervene in the DOAH proceeding. For all hearings challenging agency action on delegated solid waste permits, MDC shall be responsible for preparation for the hearings, appearance at the hearings, and the preparation and submittal of the proposed recommended orders. All recommended orders resulting from such DOAH proceedings shall be referred to the DEP Secretary for final agency action. Exceptions and responses to exceptions may be filed by MDC with the DEP's Office of General Counsel within the times set forth in the applicable DEP rules. Appeals of final orders entered following an administrative hearing shall be the responsibility of DEP. MDC may join the appeal as a party.

- b. Interpretation of Rules. Legal interpretation of DEP rules shall be made by DEP. Legal interpretation of MDC ordinances shall be made by MDC. If, in the course of processing DEP solid waste permit applications, the interpretation of a DEP rule becomes an issue, MDC shall consult with DEP to determine the appropriate MDC interpretation. If DEP is enforcing MDC ordinances, then DEP shall consult with MDC concerning the appropriate DEP regulatory interpretation. In the event that there is litigation concerning the interpretation of DEP's rules, then DEP shall provide testimony concerning the interpretation of those rules. To the extent that litigation involves interpretation of County ordinances, MDC shall provide testimony concerning the interpretation of MDC's ordinances.

- (b) Non-Delegated Permits. MDC shall be provided the opportunity to comment on the processing of applications for non-delegated DEP solid waste permits in accordance with the following general procedure.

- 1. DEP's Application Review Procedures. When DEP receives a solid waste permit application for a solid waste management facility on which DEP is to take final agency action, DEP shall (within three working days) forward one copy to MDC for review and comment. DEP shall provide MDC with sufficient opportunity to comment on the completeness of each such permit application, as well as to recommend issuance or denial. All letters of incompleteness, intents to issue or deny, and any permits issued shall be

prepared and signed by DEP staff, and a copy of each DEP permit shall be sent to MDC at the time the original action is issued.

2. MDC's Application Review Procedures for Non-Delegated DEP Solid Waste Permits.

- a. When MDC receives an application for a non-delegated DEP solid waste permit for which DEP is to take final agency action, MDC shall return the application and associated fees to the applicant within three working days of receipt by MDC, with instructions to resubmit the application to DEP, or, at the applicants request, MDC will forward the application and the application fees to DEP, notifying the applicant that the permit application timeclock will not start until DEP receives the application and fees.
- b. Within 10 working days of receipt of a copy of the application for a non-delegated DEP solid waste permit, MDC may, and in its sole discretion, review the application for completeness and advise DEP of any information that MDC determines is necessary for evaluation.

3. Conflict Resolution. Although DEP has the responsibility for decisions on final agency action for all applications for non-delegated DEP solid waste permits, and for all delegated permits for which a state administrative hearing is held, an effort shall be made to reach an acceptable agreement if a conflict arises between MDC and DEP with respect to DEP permit issuance or denial.

(3) Solid Waste Management Facility Compliance and Enforcement. DEP and MDC shall conduct solid waste compliance and enforcement activities as follows:

- (a) Compliance Assistance. DEP has adopted compliance assistance policies that are intended to provide opportunities for facilities with minor violations that do not result in any actual environmental harm to come into compliance without the need for formal enforcement activity. DEP acknowledges that MDC also provides compliance assistance opportunities built into its compliance effort. DEP and MDC agree, to the extent practical, they will provide compliance and assistance opportunities in a manner consistent with the State of Florida's compliance assistance memorandum dated November 16, 2011, **Attachment 7**.
- (b) MDC's Authority. Pursuant to MDC's independent authority to regulate solid waste within the geographical limits of MDC, MDC may inspect the same facilities for which DEP conducts compliance inspections, and may conduct inspections of any solid waste facility more frequently than DEP. MDC may also conduct solid waste compliance inspections for DEP on a facility by facility basis when requested to do so by DEP. Consistent with MDC's authority and Section

403.182 F.S., nothing in this Solid Waste SOA prevents MDC from enforcing its own rules, regulations, orders and ordinances,

- (c) Inspections by DEP. Pursuant to Section 403.182(6), F.S., DEP shall have jurisdiction to enforce the provisions of Chapter 403 F.S. and any rules, regulations or orders issued pursuant to Chapter 403 throughout the State of Florida. Unless circumstances make notice inappropriate, in the sole opinion of DEP, DEP shall provide prior notification to MDC.
- (d) MDC Enforcement Actions. Nothing in this SOA shall limit MDC's authority to enforce any of the provisions of the Code of Miami-Dade County, Florida.
- (e) Exchange of Information. All records of complaints; records of inspections, results of laboratory analyses and other such related material in the possession of MDC shall be made available to DEP upon request or as otherwise set forth in this Solid Waste SOA.
- (f) Concurrent Action. MDC shall assume the enforcement lead role for violations of State laws, rules, and regulations and MDC ordinances for solid waste within Miami-Dade County for delegated facilities. DEP will assume the lead enforcement role for all inspections and enforcement of State laws, rules, and regulations at all facilities not delegated. If DEP takes enforcement action against a delegated solid waste management facility, it shall enforce any County ordinances that are stricter or more stringent than DEP rules and regulations, pursuant to Section 403.182(6), F.S. MDC shall continue to provide the necessary support for DEP's action as requested. A joint or consolidated enforcement action shall be considered as an alternative to a unilateral DEP action, where feasible. If enforcement actions are initiated by DEP and MDC against the same source for the same violations, then the actions shall be combined as a joint or consolidated enforcement action where possible. MDC retains the right to resume an independent enforcement action should DEP fail to resolve the violation.
- (g) Enforcement Guidelines MDC shall maintain all civil penalty calculations for each enforcement action in the appropriate enforcement file, and shall provide information regarding those calculations to DEP upon request.
- (h) Coordination. Nothing in this agreement shall prohibit either DEP or MDC from taking enforcement action for violations of their respective rules. However, MDC must coordinate with DEP on any action it intends to pursue under Section 403.161, F.S., when such action is initiated against a delegated facility for violations of DEP rules or statutes.
- (i) Compliance and Enforcement Reporting Requirements. MDC shall report MDC's compliance and enforcement activities at delegated solid waste management facilities to DEP using SWIFT. All such compliance and

enforcement data shall be entered into SWIFT within five working days of each activity. MDC shall report its enforcement activities quarterly to DEP within 20 days following the end of each quarter (due by April 20, July 20, November 20 and January 20 of each year). This quarterly enforcement report shall include: (1) number of violations by type of violation and facility class; (2) number of enforcement actions by type; (3) total dollar amount of fines assessed; and, (4) total dollar amount of fines collected.

- (4) Solid Waste Management Facility Compliance Monitoring Procedures. Compliance monitoring shall be performed by MDC according to procedures established by applicable State statutes, rules, and guidelines at frequencies required therein or as specified in the appropriate DEP solid waste management facility permit. Associated quality assurance/quality control techniques shall be followed. The established inspection frequency shall be specified in a separate written document agreed to by DEP and MDC.
- (5) Complaints. MDC shall receive, respond to, and investigate all complaints from citizens, or those citizen complaints received by DEP and forwarded to MDC, relating to solid waste management within the geographical area of MDC, with the exception of non-delegated facilities. Records shall be kept of all complaints.
 - (a) Referral of Complaints from DEP to MDC. DEP shall refer any complaints that DEP receives regarding solid waste investigation, except complaints regarding non-delegated facilities.
 - (b) Referral of Complaints from MDC to DEP. In the event that MDC receives any complaints for non-delegated facilities, MDC will refer them to DEP in a prompt manner.
 - (c) Response to Complaints Investigated by MDC. If, while investigating a complaint at a delegated facility, a violation of a State solid waste standard, rule, or permit condition is determined by MDC to have occurred, MDC shall notify the violator, initiate appropriate action to obtain compliance, and inform the complainant of the action taken.

PART IV

MISCELLANEOUS PROVISIONS

- (1) General Information Requests. MDC shall answer telephone inquiries and written requests from individual citizens, the news media, and other organizations for general information about solid waste or about specific program activities or solid waste issues. As time and resources allow, MDC employees shall speak to schools, civic groups, and other interested organizations when requested to do so. Inquiries about DEP solid waste rules which require interpretation and guidance shall be referred to DEP for reply.

- (2) Solid Waste Program Computer Information Systems. MDC shall access DEP's computer information systems and seek to assure sufficient availability of on-line time to accomplish the various updates required under this Solid Waste SOA. MDC shall also designate a person to serve as MDC's computer information system contact. MDC shall be responsible for maintaining users' manuals, distributing information on revisions to all users in MDC, and notifying the computer information system coordinator in DEP of any systems-related problems or training needs that exist within MDC.
- (3) Natural Disasters. DEP and MDC agree to coordinate and cooperate with each other and with other governmental entities as appropriate to respond to natural disasters. In the event that DEP issues an Emergency Order for management of disaster debris, MDC shall cooperate with the DEP Emergency Order in accordance with the provisions of the Emergency Order, issue the necessary authorizations for debris staging areas, and conduct inspections of such staging areas.
- (4) Inquiries. Inquiries from the Governor's Office, Cabinet, and members of the Legislature regarding DEP delegated solid waste management facilities shall be forwarded, as applicable, to MDC. MDC shall respond to any inquiries from the Governor's Office, Cabinet, and members of the Legislature within seven working days, and shall provide copies of the responses to the DEP District and DEP Division.
- (5) Whenever DEP or MDC are required to provide or mail copies of documents to each other, each agency shall provide such documents by electronic mail whenever possible and practical.
- (6) Effective Date and Modification Dates. Subsequent approvals of modifications to this SOA shall not change the effective date.

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION


MIAMI-DADE COUNTY, FLORIDA
a political subdivision of State of Florida

BY _____
Jorge Caspary, Director
Division of Waste Management
2600 Blair Stone Road
Tallahassee, Florida 32399-2300

BY _____
Mayor
111 N.W. 1st Street, Suite 2910
Miami, Florida 33128-1994

Date: _____

Date: _____

Approved for Legal Sufficiency

Tom Robinson

LIST OF ATTACHMENTS

1. MDC Ordinances, Stricter or More Extensive Than DEP Rules
2. MDC Organizational Charts
3. List of Non-delegated Facilities
4. Lead and Support Agency Assignments
5. DEP Policy Memo on RAIs dated March 22, 2011
6. Examples of PA Auto-generated Emails
7. DEP Compliance Assistance Memo dated November 16, 2011

Attachment 1 - MDC Ordinances, Stricter or More Extensive Than DEP Rules

The complete copy of Chapter 24 of the Miami-Dade County Code is located at the following website:

www.municode.com

Attachment 2 - MDC Organizational Charts

Regulatory and Economic Resources
Jack Osterholt, Deputy Mayor/Director

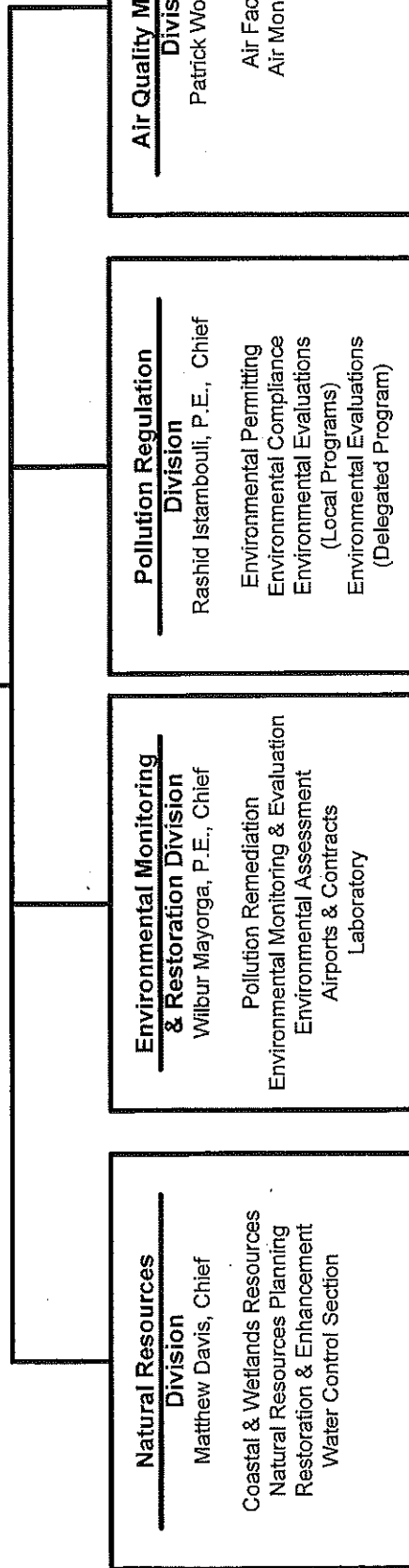
Administrative Services Division
Marcia Melendez, Chief

Environmental Plan Review Division
Cristian Guerrero, P.E., Chief

Environmental Resources Management (DERM)
Lee Hefty, Assistant Director
Paul Voight, Intergovernmental Affairs Coordinator
Frances Rodgers, Senior Executive Secretary

Environmentally Endangered Lands
Cynthia Guerra
Special Project Administrator 2

Regulatory Services
Jose Gonzalez, P.E.,
Senior Division Chief
Code Coordination & Public Hearing
Code Enforcement
Records Management
Water Resources Coordination & Education



Environmental Resources Management (DERM)

Lee Hefty, Assistant Director

ENVIRONMENTAL PERMITTING SECTION

Johnny Vega, P.E. Sr. Professional Engineer
 Yaimara Perez Engineer 2
 Susana Palomino, P.E. Engineer 2
 Pablo Asencio Engineer 1
 Keith McIntosh Engineer 1
 Ana Diaz-Ramos Env. Resources Project Supv.
 Marcelo Barros Env. Resources Project Supv.
 Derrick Roby Env. Resources Project Supv.
 Leonor Valdes P.C. Plan Reviewer
 Estelle Anorga-Arteaga Secretary

POLLUTION REGULATION DIVISION

Rashid Istambouli, P.E. Division Chief
 Carmen Garcia Administrative Secretary

WASTEWATER PERMITTING SECTION

Carlos Hernandez, P.E. Sr. Professional Engineer 3
 Oscar Aguirre Engineer 2
 Galo Pacheco Engineer 2
 Richard Neumann III, P.E. Engineer 2
 Rosa Areas Engineer 2
 Hala Mirza Engineer 2
 Jacqueline Alcina Engineer 1
 Myrelle Colon Inspector 2
 Erlendo Javellana Data Entry Specialist 1
 Alejandra Villanueva

ENVIRONMENTAL COMPLIANCE SECTION

Xiomara Lopez Manager
 Sonia Rosado Env. Specialist Supervisor
 Eduardo de Aragon Env. Specialist Supervisor
 Eva Lizardo Env. Specialist Supervisor
 Jim Ernst Env. Resources Project Supv
 Sameena Ahmed(LOA) IT Specialist
 Rita Graham Inspector 2
 Wendell Beddoe Inspector 2
 Rene Cerezo Inspector 2
 Aldo Fernandez Inspector 2
 Jose Diaz Inspector 2
 Ivan Vento Inspector 2
 Marguerite Jarquin Inspector 1
 Roger Smith Inspector 1
 Andrew Walloch Inspector 1
 Lizet Torres Environmental Tech. 2
 Horacio Wong Environmental Tech. 2
 Rafael Rodriguez Environmental Tech. 2
 Susan Carrero Environmental Tech. 2
 Roosevelt Jean Environmental Tech. 2
 Charles Nwaokoh Environmental Tech. 2
 Gladys Gonzalez Data Entry Specialist 2
 Christina Lopez Data Entry Specialist 2
 Anthony George Clerk 2

ENVIRONMENTAL EVALUATIONS DELEGATED PROGRAMS SECTION

Mayra Flagler Manager
 Tricia Kong Env. Specialist Supervisor
 Yanett Rodriguez Env. Specialist Supervisor
 Rosana Rivera Env. Specialist Supervisor
 Patti Emad Env. Specialist Supervisor
 Isabel Puente Env. Specialist Supervisor
 Ana Chirino Env. Specialist Supervisor
 Michael Montano Env. Specialist Supervisor
 Juan Trimble Inspector 2
 Allen Cox Inspector 2
 Liliana Correa Inspector 2
 Alejandro Vergara Inspector 2
 Francisco Teresa-Calleja Inspector 2
 Khosrow Dashtaki Inspector 1
 Tom Mikell Inspector 1
 Ryan Briggie Inspector 1
 Carlos Fernandez-Bango Inspector 1
 Carlos R. Lincheta Rios Inspector 1
 Yailyn Guillarte Inspector 1
 Eric Miller Inspector 1
 Richard Eguino Inspector 1
 Christopher Runte Inspector 1
 Vacant Inspector 1
 Yuliet Bello Inspector 1
 Bodler Berthelemy Inspector 1
 Yoana Cosyleon Inspector 1
 Yanara Barreras Inspector 1
 Vivian Mendoza Inspector 1
 Vacant Inspector 1(PT)
 Jose Socarras Environmental Tech. 2(LW)
 Josefina Vitale Data Entry Specialist 2
 Sabrina Thomas Secretary

ENVIRONMENTAL EVALUATIONS LOCAL PROGRAMS SECTION

Karl Markeset Manager
 Laura Castillo Env. Specialist Supervisor
 Eric Carr Env. Specialist Supervisor
 Magalie Gelin Env. Specialist Supervisor
 Anibal Sanchez Env. Specialist Supervisor
 Lourdes Centeno Env. Specialist Supervisor
 Krystal Y-Simmons Env. Res. Proj. Supv.
 Mike Graham Env. Resources Project Supv.
 Luis Estrada Inspector 1
 Raul Fundora Inspector 1
 Oscar Hernandez Inspector 1
 Marie Marasse Inspector 1
 Nelson Martinez Inspector 1
 Aurora Miguelez Inspector 1
 Roberto Ramirez Inspector 1
 Malsha Reed Inspector 1
 Beverly Gutierrez Inspector 1
 Lena Chambliss Inspector 1
 Daira Marrero Inspector 1
 Romulo Padilla Inspector 1
 Grace Quintanilla Inspector 1
 Elizabeth Rogers Inspector 1
 Guedna Desir Inspector 1
 Susette Irizarry Inspector 1
 Joel Silva Inspector 1
 Martin Chance Inspector 1
 Elsa Cabrejo Inspector 1
 Diana Jo Lau Inspector 1
 Ania Zas Secretary

Attachment 3 - List of Non-delegated Facilities

1. Dade County North Dade Landfill
2. Dade County Resources Recovery Facility and Ash Landfill – Power Plant Siting
3. 58th Street Landfill
4. Dade County Aviation Department Landfill
5. Dade County South Dade Landfill
6. Munisport Landfill: this site will be managed jointly by DEP and MDC pursuant to separate site specific agreement(s)
7. Waste Management Medley Landfill

Attachment 4 - Lead and Support Agency Assignments

For Permitting, Compliance and Enforcement Activities

Program or Program Element Assignment	Agency MDC	DEP
Solid Waste Program		
1. County Owned or Operated Facilities	Support	Lead
2. Active Class I and III landfills	Support	Lead
3. WTE facilities and ash landfills	Support	Lead
4. Compost Facilities	Lead	Support
5. Waste Processing Facilities	Lead	Support
6. Off-Site Construction and Demolition Debris Disposal Facility	Lead	Support
7. Waste Tire Processing Facilities	Lead	Support
8. Waste Tire Collectors and Mobile Processors	Support	Lead
10. Variances, Alternate Procedure	Support	Lead
11. Off-site Land Clearing Debris Disposal Facility	Lead	Support
12. Landfills closed prior to July 1, 1985	Lead	Support
13. Landfills closed on or after July 1, 1985	Support	Lead

NOTE: If a delegated facility becomes a Superfund site or is listed on the NPL and MDC is determined to be a potentially responsible party; then the Department will become the lead for that facility.

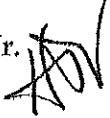
Attachment 5 - DEP Policy Memo on RAIs dated March 22, 2011

Memorandum

Florida Department of Environmental Protection

TO: Regulatory Division Directors
Regulatory District Directors

CC: Jeff Littlejohn, P.E.
Deputy Secretary for Regulatory Programs

FROM: Herschel T. Vinyard Jr. 
Secretary

DATE: March 22, 2011

SUBJECT: Policy for Requests for Additional Information (RAI)

To ensure that the Department is reviewing permit applications in a timely fashion, I am establishing a formal policy for the review and management of Requests for Additional Information (RAI) in the permitting process. I understand that the regulatory divisions and districts currently have management review procedures in place, and this new regulatory-wide policy will be more rigorous and will ensure consistency across the divisions and district offices.

Effective immediately, the following policy will apply to RAIs:

1st RAI -- Will require a mandatory review by the permitting supervisor. The RAI can be signed by the permit processor or the permitting supervisor.

2nd RAI -- Must be signed by the program administrator.

3rd RAI -- Must be signed by the district director (districts) or bureau chief (divisions). In addition, each district and division must submit a monthly report through the Deputy Secretary for Regulatory Programs of the 3rd RAIs issued and an explanation of why the RAI was issued.

4th RAI or more -- Will require my approval prior to issuing the 4th or more RAI.

In addition, all RAIs should be sent to the project owner, not only consultants and agents, so that the owner is aware of the application's status.

Attachment 6 - Examples of PA Auto-generated Letters

Example of Notice of Receipt of Application

Applicant Name: [name]
Applicant Company: [name]
Permit File Number: [permit number]
WACS ID: [number]
Application Received Date: [date]
Project Name/Description: [description]

Dear Applicant:

Thank you for the recent Permit Application regarding the above referenced facility. We value your time and wanted you to know that the Department is working on identifying ways to streamline its review process. We would like to reduce the number of requests for additional information (RAIs), as well as the overall time we each need to complete the review. We appreciate your effort to assist us in providing a timely review by ensuring that the response to any RAI you may receive is thorough and complete. We also encourage communication with our permit processor if there are questions which may help with any RAI you may receive.

If you have any questions regarding this Permitting Application, please contact the Permitting Processor - [name] at [email address] or by phone at [number].

If you feel you have received this email in error, please contact [permit processor] at [email address].

Example of RAI Reminder Letter

Applicant Name: [name]
Applicant Company: [name]
Permit File Number: [permit number]
WACS ID: [number]
Application Received Date: [date]
Project Name/Description: [description]

Dear Applicant:

This email was auto generated as a courtesy to remind you that it has been 34 days since the Department requested additional information (RAI) associated with your application referenced above. If you have already submitted the information, or have made other arrangements with the Permitting Processor, please disregard this courtesy notification.

We recognize that additional time may be needed to provide the requested information, and encourage you to contact us if you feel that additional discussions may facilitate the preparation of the response, or our understanding of the application. If you believe an additional extension is warranted, we are willing to work with you to review the circumstances for the requested extension.

It is the goal of this letter to better assist you and to facilitate the active processing of your permit application. Where a permit application is not completed by an extended deadline without good cause, the Department may propose an agency action to deny the permit.

If you have any questions regarding this Permitting Application, please contact the Permitting Processor - [name] at [email address] or by phone at [number].

If you feel you have received this email in error, please contact [permit processor] at [email address].

Attachment 7 - DEP Compliance Assistance Memo dated November 16, 2011



Florida Department of
Environmental Protection
Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Rick Scott
Governor

Jennifer Carroll
Lt. Governor

Herschel T.
Vinyard Jr.
Secretary

TO: Regulatory Directors
FROM: Jeff Littlejohn, Deputy Secretary, Regulatory Programs *JML*
DATE: November 16, 2011
SUBJECT: Regulatory Compliance

Thank you all for the good discussions about compliance assistance and enforcement at the Secretary's strategic planning meeting and our subsequent directors meeting in July. I appreciate your collective experience and the careful thought you continue to give these issues. Based on your continuing input and further reflection, I intend the regulatory programs to move forward under the following guidance.

Compliance Assistance

Keep uppermost in your mind that the department's primary *regulatory* objective is compliance with Florida's environmental laws. As such, compliance assistance must be integral and fundamental to our work.

Please expand your outreach, education and technical assistance efforts to help your constituents avoid violations. Reach out to local small business organizations, trade groups, homeowners associations, contractors, local governments, and similar groups to arrange regular and continuing educational meetings, Q&A sessions, permitting and compliance guidance workshops, etc. You provided Carla with examples of the kind of outreach assistance you undertake (attached). We need to actively transfer effective strategies across District and Division boundaries — and we will discuss how best to do so at our upcoming directors meeting. Compliance assistance must be integral and fundamental to your work. I expect the districts and divisions to work together to develop and implement well thought out programs with specific compliance objectives.

I also want to make sure we routinely offer the opportunity for pre-application meetings. These are particularly important for applicants with limited access to

consulting resources. They are also valuable for projects you believe are likely to prove controversial, in order to make sure the ground rules are clear up front and to understand the applicant's objectives.

Pre-application and compliance assistance is hard work and takes time. It is essential, then, to track it in terms of time and effort—and results. What's the pay off? Do our actions improve compliance over time and, if so, to what measurable degree? Can we determine which actions are most effective? Can we use the information to adapt and better target strategies? Cause and effect relationships may be difficult to establish, but we will work on that problem collectively over time. We also must have data systems to account for the time, effort and results; and we have to transfer knowledge—successful models should be expanded, unsuccessful ones dropped.

Formal assistance is essential, but your day-to-day encounters with regulated interests and the general public are the best opportunity we have to gain good will, trust and responsiveness—all of which will improve compliance and environmental stewardship. Build good relationships every day. Every phone call, every drop-in visitor, every inspection, every meeting of any sort is a forum for positive interaction. That does not mean your answer is always "yes"—it does mean that every transaction must be professional, respectful and helpful.

Inspections and Enforcement

One tool for delivering compliance assistance is, of course, field inspections. Inspections are not only a means of detecting violations and making responsible decisions about enforcement, they also are a gauge by which to identify patterns and trends in environmental behavior in order to target compliance assistance. Patterns may involve a single actor over time, a type of activity, an area, or an industry sector, for example. While they may identify those who warrant meaningful enforcement, patterns may also reflect confusing regulatory requirements or inconsistencies in our application of requirements, both of which we need to fix. Understanding patterns requires attention and analysis. The results should be factored into future actions—so we can adapt and improve.

Where noncompliance occurs, despite your best efforts at education and outreach, your first consideration should be whether you can bring about a return to compliance without enforcement. The department's longstanding practice, explicitly set forth in the Enforcement Manual, recognizes that if compliance can be achieved without enforcement, the outcome is usually timelier and less costly than formal measures, especially legal proceedings, and allows the focus to be on fixing the problem, achieving positive environmental results, and moving forward.

Compliance without enforcement is certainly not appropriate in all situations, but it is the right approach when a violation is limited in scope, the violator is unaware or genuinely confused about the requirements and is cooperative and willing to rectify the situation and restore any damage. (Consideration must always be given to federal delegation agreements, which may prescribe an enforcement response.) Such situations typically can be resolved by informal agreement or letter, with agency follow-up to make sure the issue is resolved. If corrective actions are complicated and time consuming, a consent order making everyone's responsibilities clear may be a better choice.

In some instances, parties report on themselves when they discover an inadvertent violation. The department should encourage this behavior, which shows good faith on the part of the reporter and helps us quickly reach a positive environmental result. These situations may be handled without enforcement as well if the violation is limited in scope and the violator is not a chronic offender (unlikely for a self-reporter) and is willing to fix the problem and restore any damage. Again, if corrective actions are simple, the situation can be resolved by informal agreement or letter, with agency follow-up. If corrective actions are complicated, a consent order may prove necessary. (And, again, federal delegation agreement requirements must be considered.)

Determining whether achieving compliance without enforcement is the right approach is not always straightforward. Determining the right penalties when formal enforcement becomes necessary. The direction provided by the Enforcement Manual, including the specific guidelines for characterizing different types of violations, is essential to promoting consistent practices. The division offices and the Office of General Counsel are positioned to help make these judgments and review outcomes to assure that we are consistent. With that in mind, I will be asking the divisions and OGC to make recommendations to me on reviewing penalties and other compliance and enforcement practices.